

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SEAN DIAS,

Plaintiff,

v.

WILLIAM AVILA, et al.,

Defendants.

Case No. 1:24-cv-00354-SAB

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND GRANTING
DEFENDANTS' MOTION TO DISMISS

Docs. 4, 8, 11

Plaintiff Sean Dias, proceeding pro se, filed this civil rights action in the Superior Court Tulare County on March 7, 2024. Doc. 1 at 6–14. On March 26, 2024, defendants William Avila and Dominick Garay removed the action to this Court. *Id.* at 1–4. On March 27, 2024, defendants filed a motion to dismiss, Doc. 4, and the motion was directly assigned to the magistrate judge pursuant to L.R. App. A(m), Doc. 8 at 1. However, because plaintiff had not appeared or filed consent or declination of consent forms as required by L.R. App. A(m)(1), the magistrate judge issued findings and recommendations which were referred to the undersigned.

The findings and recommendations recommend defendants' motion to dismiss be granted and plaintiff be granted leave to file an amended complaint. Doc. 8. The findings and recommendations contained notice that any objections to the findings and recommendations were to be filed within twenty-one (21) days from the date of service. The period for filing

1 objections has passed and no objections have been filed.

2 In accordance with the provisions of 28 U.S.C. § 636(b)(1), the Court has conducted a de
3 novo review of this case. Having carefully reviewed the file, the Court concludes the findings
4 and recommendations are supported by the record and by proper analysis. Accordingly,
5 plaintiff's complaint is dismissed, with leave to amend. Plaintiff shall file an amended
6 complaint, if any, within **thirty (30) days** of the date of service of this order. **Plaintiff is**
7 **warned that failure to timely file an amended complaint may result in the dismissal of this**
8 **action with prejudice.**

9 Additionally, defendants filed another motion to dismiss on November 20, 2024, arguing
10 that this action should be dismissed with prejudice for failure to prosecute because defendant
11 did not file an amended complaint after the magistrate judge issued the findings and
12 recommendations. Doc. 11 at 1. However, following the issuance of findings and
13 recommendations that recommend dismissal with leave to amend, a plaintiff has no obligation
14 to file an amended complaint unless and until a district judge issues an order adopting those
15 findings and recommendations. *See* 28 U.S.C. § 636(b)(1). Therefore, defendants' second
16 motion to dismiss, Doc. 11, is DENIED.

17 Plaintiff is advised that his amended complaint must state what each named defendant
18 did that led to the deprivation of plaintiff's constitutional rights. *Ashcroft v. Iqbal*, 556 U.S.
19 662, 678–79 (2009). Although accepted as true, the “[f]actual allegations must be [sufficient]
20 to raise a right to relief above the speculative level . . .” *Twombly*, 550 U.S. 544, 555 (2007)
21 (citations omitted). Finally, plaintiff is advised that an amended complaint supersedes the
22 original complaint. *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 927 (9th Cir. 2012). Therefore,
23 Plaintiff's amended complaint must be “complete in itself without reference to the prior or
24 superseded pleading.” Local Rule 220.

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1 Accordingly, IT IS HEREBY ORDERED that:

- 2 1. The findings and recommendations issued May 7, 2024, Doc. 8, are ADOPTED
- 3 in full;
- 4 2. Defendants' motion to dismiss, Doc. 4, filed March 27, 2024, is GRANTED;
- 5 3. Defendants' motion to dismiss, Doc. 11, filed November 20, 2024, is DENIED;
- 6 4. The Clerk's Office is directed to send Plaintiff a complaint form;
- 7 5. Plaintiff shall file an amended complaint within **thirty (30) days** of the date of
- 8 service of this order; and
- 9 6. This matter is referred to the assigned magistrate judge for further proceedings.

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12 IT IS SO ORDERED.

13 Dated: January 3, 2025



UNITED STATES DISTRICT JUDGE